IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1080 OF 1980

The Cotton Corporation of India Ltd. .
a Company incorporated under Companies .
Act 1956, having their office at .
Air India Building, 12th floor, .
Nariman Point, Bombay, 400 021. ....Plaintiffs

V/s.

Shree Sivakami Mills Ltd., .
a Company incorporated under .
the Companies Act having their .
registered office at Thenur, .
Madurai, District Tamilnadu ....Defendants

Mr.R.C. Shah i/b M/s.Divekar & Co. for the Plaintiffs.

None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 29TH JUNE 2006.

ORAL JUDGEMENT :

1. The suit is filed to recover a sum of Rs.13,21,162=96 ps.

. *The Plaintiffs' case* :

2. At the relevant time the Plaintiffs were canalising agents for importing foreign cotton. The Plaintiffs imported large quantities of cotton by entering into contracts with foreign suppliers. The

import was pursuant to a bulk license. Circulars inviting offers from textile mills in India were issued for purchase of the cotton from the Plaintiffs. The orders placed by mills were referred to the Textile Commissioner, Government of India for allotment of cotton. The Textile Commissioner after following the procedure and taking into consideration the relevant factors, issued a quota letter in favour of the mills. Thereafter the Plaintiffs entered into contracts with the mills.

3. In the present case, a contract dated 28.3.1977 was entered into whereby the Defendants agreed to purchase from the Plaintiffs 500 bales of cotton at the price of Rs.4550/- per candy c.i.f. Bombay and on the other terms and conditions contained therein. The Defendants however failed to take delivery of the consignment. By a letter dated 5.7.1977, the Defendants confirmed a telegram sent by it to the Plaintiffs stating that the Plaintiffs should treat the allotment as cancelled and sell the bales to others. Subsequently correspondence ensued between the parties. Ultimately the Plaintiffs sold the said consignment to third parties and demanded from the Defendants difference in the price between the contract price and the amounts realised upon

resale together with interest thereon. The differential price mentioned in the particulars of claim includes clearance charges, demurrage and carrying charges. This is in accordance with the contract and especially clauses 13 and 19 thereof.

. *The Defendants' case :*

4. The Defendants filed their written statement. The Defendants raised two preliminary issues. The Defendants contended that this Court has no jurisdiction and that the suit is barred by limitation. On merits the Defendants have gone to the extent of denying the contract. The Defendants further contended that the contract was one sided and therefore illegal and unsustainable. It is then contended that the Defendants had made it clear that the cotton should be shipped in May and that the time of delivery was of the essence of the contract. Accordingly it is contended that this was the basis on which the Defendants applied for the quota from the Textile Commissioner. The written statement thereafter contains denials of the facts regarding clearance of the goods and resale. The Defendants deny that the Plaintiffs suffered any loss.

5. By an order dated 31.1.2000 A.B. Palkar, J. (as His Lordship then was) framed the following issues :-

I S S U E S

1) Whether this Hon'ble Court has no jurisdiction to entertain and try this suit as stated in para 1 of the written statement ?

2) Whether the Claim in the suit is barred by the Law of Limitation as stated in para 1a of the written statement ?

3) Whether the plaintiffs prove that a valid and concluded contract was arrived at between the Plaintiffs and Defendants whereby the Plaintiffs agreed to import and sell and Defendants agreed to purchase 500 bales of cotton as stated in para 2 of the plaint ?

4) Whether the Defendants prove that they applied for a quota from Textile Commissioner on the basis that the cotton should be a May shipment, and time of delivery being of essence as stated in para 4 of the written statement ?

5) Whether the Plaintiffs prove that the Defendant committed a breach of contract by failing to take delivery of the cotton as stated in para 5 of the plaint ?

6) Whether the Defendants repudiated the contract as stated in para 5 of the written statement contending they were entitled to repudiate the same for the reasons stated ?

7) Whether the Plaintiffs prove that they suffered a loss of Rs.13,21,162.96 as a result of failure on the part of Defendant to take delivery of cotton as stated in para 6 of the plaint ?

8) What relief ? What order ?

6. The Defendants remained absent at the hearing of the suit. The Plaintiffs examined one V. Munikrishnan by filing his affidavit dated 27.6.2006 in lieu of examination-in-chief. The witness has deposed that he is personally aware of the facts and circumstances relating to the suit transactions and deposed on the basis of his personal knowledge. Through the witness, relevant documents have been tendered which have been admitted in evidence and

marked Exhibits A-1 to A-24.

. **Issue No.1 :**

7. The contract was signed by the Plaintiffs in Bombay, payment of the price was to be made inter-alia in Bombay, orders for purchase and supply of the bales were placed by the Defendants with the Plaintiffs in Bombay. Contending that a material part of the cause of action had arisen in Bombay, the Plaintiffs sought and obtained leave under Clause XII of the Letters Patent. The leave has not been withdrawn. This Court therefore has jurisdiction to entertain, try and dispose of this suit.

8. In the circumstances, issue No.1 is answered in the negative and in favour of the Plaintiffs.

. **Issue No.2 :**

9. By the aforesaid letter dated 5.7.1977, the Defendants categorically instructed the Plaintiffs to treat the allotment as cancelled and to sell the bales to others. Thereafter the Plaintiffs sold the goods and adjusted the price recovered against the loss suffered. In any event the suit was filed on

4.7.1980. There is no question of the suit being barred by limitation.

10. In the circumstances, issue No.2 is answered in the negative and in favour of the Plaintiffs.

. **Issue No.3 :**

11. A plea that no contract was entered into, is ex-facie dishonest and unsustainable. The correspondence clearly indicates that the Defendants accepted the contract and treated it as valid and subsisting. Pursuant to the contract, the Plaintiffs by a letter dated 1.7.1977 informed the Defendants regarding the shipment of the said goods and called upon the Defendants to advice the Plaintiffs as regards the payment bills. There was no demur or response from the Defendants in this regard. The doubt, if any, is set at rest by the said letter dated 5.7.1977 itself by which the Defendants inter-alia stated : "..... you can treat our allotment as cancelled and sell the bales to others." This establishes beyond doubt that the Defendants accepted the contract and proceeded on the basis that the same had been entered into.

12. In the circumstances, issue No.3 is answered in the affirmative and in favour of the Plaintiffs.

. **Issue No.4 :**

13. The allegation that the Defendants applied for quota from the Textile Commissioner on the basis that the cotton should be by the May shipment is not proved. The onus was on the Defendants to do so. The Defendants have not led any evidence. In any event the written contract is to the contrary. This defence was not even taken when the said letter/telegram dated 5.7.1977 was addressed. Clearly it is an after-thought.

14. In the circumstances, issue No.4 is answered in the negative and in favour of the Plaintiffs.

. **Issue Nos.5 and 6 :**

15. The breach of contract, if not admitted, is clearly established. As stated above, under the contract the Defendants were bound to take the delivery of the cotton and to pay for the same as well as the charges mentioned therein. The Defendants admittedly did not do so. The Defendants by the said

letter dated 5.7.1977 called upon the Plaintiffs to treat the allotment as cancelled. There was no allegation of any breach by the Plaintiffs. By a further letter dated 10.8.1977, the Defendants mentioned that they were construed to cancel the contracts for the reasons stated therein. There was no allegation that the Plaintiffs were responsible for the same. The letter in fact categorically states that the Defendants had merely requested the Plaintiffs to treat the allotment as cancelled.

16. It is clearly established that the Defendants committed breach of the contract by failing to take delivery of the cotton.

17. In the circumstances, issue No.5 is answered in the affirmative and in favour of the Plaintiffs. Issue No.6 is answered in the negative.

. **Issue No.7 :**

18. The Plaintiffs have produced all the documents indicating the price at which the goods were sold and further costs, charges and expenses which the Plaintiffs have incurred in respect of the said consignment. The Plaintiffs right to claim the amount

is by the terms of the contract and by law.

19. In the circumstances, issue No.7 is answered in the affirmative and in favour of the Plaintiffs.

. **Issue No.8 :**

20. The suit is decreed as prayed.

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SUIT NO.1080 OF 1980

DATE OF DECISION : 29TH JUNE, 2006

For Approval and Signature :

HON'BLE MR.JUSTICE S.J. VAZIFDAR.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?)
2. To be referred to the Reporter or not ?)